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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,071	04/18/2001	Brian Mark Shuster	409475-28	8828
23879	7590	09/21/2006		
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899				
			EXAMINER	
			CHAMPAGNE, DONALD	
			ART UNIT	PAPER NUMBER
			3622	

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/837,071	SHUSTER, BRIAN MARK	
	<b>Examiner</b>	<b>Art Unit</b>	
	Donald L. Champagne	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 June 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-36 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 April 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed with an amendment on 30 June 2006 have been fully considered but they are not persuasive. The arguments are addressed by the following revised rejection.

***Claim Rejections - 35 USC § 102 and 35 USC § 103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 16-18, 21-26, 31-33, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Herz et al. (US005754938A).

5. Herz et al. teaches (independent claims 1 and 21) a system and method for aggregating information, the system comprising:

a memory device (*mass storage system SS<sub>4</sub>*, col. 56 lines 29-30);

a server (*information server S<sub>4</sub>*, col. 56 line 30) adapted to be connected to a plurality of reception devices (*personal computers*, col. 28 line 53) and a plurality of remote information systems (*bulletin boards*, col. 56 lines 39-43) via a wide area network (*telecommunication network N*, col. 28 line 57), whereby said plurality of remote information systems/*bulletin boards* are adapted to receive original message data and response message data (col. 73 lines 6-17 and 36-41) from said plurality of reception devices/*personal computers* and

provide said original message data and said response message data to said plurality of reception devices/*personal computers*; and

an aggregating application connected to said memory device and said server, said aggregating application adapted to:

retrieve said original message data and response message data from said plurality of remote information systems/*bulletin boards* (col. 56 lines 39-43), which reads on retrieval from said plurality of remote information systems/*bulletin boards*;

store said original message data and response message data in said memory device (col. 56 lines 28-30); and

provide said original message data and response message data to said plurality of reception devices/*personal computers* (col. 55 lines 60-61).

6. Herz et al. does not explicitly teach that said plurality of reception devices is configured to allow the original message data and the response message data to be viewed as aggregated message and response data using any one of the plurality of reception devices. However, since the structure recited in the reference is substantially identical to that of the claims, these claimed properties or functions are presumed to be inherent (MPEP § 2112.01).
7. As evidence tending to show inherency, it is noted, first, that Herz et al. does explicitly teach that said reception devices are inherently configured to allow the viewing of whatever messages/articles the server/information server S<sub>4</sub> provides. Second, applicant discloses that “original message data” includes “a previously posted new message” (specification p. 3 lines 24-25. Third, Herz et al. does teach retrieving messages/articles from electronic bulletin boards (col. 56 line 41) where said “original message data” (previously posted) would necessarily be included with response message data. Hence, The plurality of reception devices/personal computers taught by Herz et al. is inherently configured to allow the original message data and the response message data to be viewed as aggregated message and response data using any one of the plurality of reception devices.
8. Herz et al. also teaches at the citations given above claims 2, 3 and 22, 4 and 23, 5-7 and 24-26, 17, 18 32, and 33.

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9. Herz et al. also teaches claims 16 and 31 (col. 55 lines 38-60), 35 (col. 17 lines 20-21) and 36 (col. 18 lines 13-23 and col. 55 lines 38-60).
10. Claims 8-15, 19, 20, 27-30 and 34 are rejected under 35 U.S.C. 103(a) as obvious over Herz et al. (US005754938A). Herz et al. does not teach (claims 8-15 and 27-30) adding advertising to messages and (claims 19, 20 and 34) users selecting by nominating. Both email advertising and selection by nomination were common, at the time of the instant invention. It is always obvious to use common practices.
11. Official notice of this common knowledge or well-known in the art statement was taken in the last Office action (mailed 31 January 2006, para. 7). This statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. (MPEP 2144.03.C.)

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at [donald.champagne@uspto.gov](mailto:donald.champagne@uspto.gov), and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717. The fax phone number for all *formal* matters is 571-273-8300.

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15. The examiner's supervisor, Eric Stamber, can be reached on 571-272-6724.
16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
17. **AFTER FINAL PRACTICE** – Consistent with MPEP § 706.07(f) and 713.09, prosecution generally ends with the final rejection. Examiner will grant an interview after final only when applicant presents compelling evidence that "disposal or clarification for appeal may be accomplished with only nominal further consideration" (MPEP § 713.09). The burden is on applicant to demonstrate this requirement, preferably in no more than 25 words. Amendments are entered after final only when the amendments will clearly simplify issues, or put the case into condition for allowance, clearly and without additional search or more than nominal consideration.
18. Applicant may have after final arguments considered and amendments entered by filing an RCE.
19. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, [www.uspto.gov](http://www.uspto.gov). At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

Donald L. Champagne  
Primary Examiner  
Art Unit 3622

12 September 2006

DONALD L. CHAMPAGNE  
PRIMARY EXAMINER